

## **SECOND AMENDMENT TO DEED OF LEASE**

This Second Amendment to Deed of Lease (this "Amendment") is made and entered into as of July 1, 2021 (the "Effective Date"), by and between EB ROCKVILLE, LLC, a Delaware limited liability company ("Landlord") and MONTGOMERY COUNTY, MARYLAND, a body politic and corporate, and political division of the State of Maryland ("Tenant").

### **WITNESSETH:**

WHEREAS, Landlord, as successor-in-interest to FP Gude, LLC, successor-in-interest to Rock Creek M, LLC, and Tenant, are parties to a Deed of Lease dated September 28, 2000 (the "Original Lease"), as amended by that certain First Amendment to Deed of Lease dated June 27, 2011 (the "First Amendment") (together, the "Lease"), whereby Tenant leases from Landlord certain premises containing approximately 48,002 rentable square feet of retail space, known as Suite 200 (the "Premises") in the building located at 7300 Calhoun Place, Rockville, Maryland 20855 (the "Building"); and

WHEREAS, Landlord and Tenant wish to reduce the size of the Premises to 36,605 rentable square feet of space; and

WHEREAS, Tenant subleases a portion of the Premises to the State of Maryland (the "Subtenant") pursuant to that certain Standard State of Maryland Lease Form dated August 2013 (the "Sublease") as consented to by Landlord pursuant to that certain Consent to Sublease dated September 6, 2013 (the "Consent"); and

WHEREAS, Tenant desires to pay to Landlord a portion of the Rent (as defined in the Sublease) payable by Subtenant under the Sublease, in consideration for Landlord reducing the size of the Premises; and

WHEREAS, Landlord and Tenant wish to amend the Lease to extend the Term thereof and in certain other respects, subject to and upon the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing and for other consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree that the Lease is hereby amended as follows:

1. Recitals: Defined Terms. The foregoing recitals are incorporated in this Amendment by reference. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

2. Reduction of the Premises.

a. Effective July 1, 2021 (the "Premises Reduction Date"), the "Premises" for all purposes under the Lease shall be 36,605 rentable square feet of space, as shown on Exhibit A, attached hereto. The 11,397 square feet of space that comprised a portion of the Premises prior to the Premises Reduction Date (the "Give-Back Premises") shall be vacated by Tenant as required in the Lease, and Tenant shall have no further obligations with respect to the Give-Back Premises, except for those obligations that specifically survive the termination or expiration of the Lease.

b. Effective as of the Premises Reduction Date:

i. "Tenant's Proportionate Share of Common Area Expenses" shall mean: Fifty-Seven and Twelve Hundredths Percent (57.12%) for the Building.

ii. Tenant's Proportionate Share of Real Estate Taxes" shall mean: Fifty-Seven and Twelve Hundredths Percent (57.12%) for the Building.

iii. Tenant shall continue to be permitted to utilize 3.0 parking spaces in the Parking Facilities per 1,000 square feet of rentable space.

3. Extended Term. The Term is hereby extended for the period commencing on April 1, 2022 and ending at 11:59 p.m. local time on March 31, 2032 (such period being referred to herein as the "Extended Term"). Whenever the term "Term" is used herein or the Lease, it shall be deemed to refer to any one or more of the original Term or the Extended Term, as the context shall require.

4. Base Rent. Commencing on the Premises Reduction Date, Tenant shall pay Base Rent for the Premises in accordance with the following schedule:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
7/1/21 – 8/31/21	\$869,368.75	\$72,447.40
9/1/21 – 3/31/22	\$869,368.75	\$72,447.40
4/1/22 – 6/30/22	\$869,368.75	\$72,447.40
7/1/22 – 6/30/23	\$891,102.97	\$74,258.58
7/1/23 – 6/30/24	\$913,380.54	\$76,115.05
7/1/24 – 6/30/25	\$936,215.06	\$78,017.92
7/1/25 – 6/30/26	\$959,620.43	\$79,968.37
7/1/26 – 6/30/27	\$983,610.94	\$81,967.58
7/1/27 – 6/30/28	\$1,008,201.22	\$84,016.77
7/1/28 – 6/30/29	\$1,033,406.25	\$86,117.19
7/1/29 – 6/30/30	\$1,059,241.40	\$88,270.12
7/1/30 – 6/30/31	\$1,085,722.44	\$90,476.87
7/1/31 – 6/30/32	\$1,112,865.50	\$92,738.79

5. True-Up of Rent. Notwithstanding the fact that this Amendment shall be effective as of the Effective Date, Landlord and Tenant acknowledge that certain Monthly Installments of Base Rent and Additional Rent under the Lease have been paid by Tenant to Landlord prior to the execution of this Amendment, such payments being in excess of amounts owed to Landlord by Tenant under this Amendment. Tenant also agreed to deliver all Rent (as defined in the Sublease) to Landlord in consideration of Landlord agreeing to this Amendment and taking back the Give-Back Space. As a true-up for such overpayments of Rent under the Lease and the delivery of the

Rent (as defined in the Sublease), Tenant hereby agrees to pay Fourteen Thousand Two-Hundred Ninety-Five and No/100 Dollars (\$14,295.00) (the "Rent True-Up Payment") to Landlord. Tenant shall deliver the Rent True-Up Payment to Landlord prior to the commencement of the Extended Term.

6. Base Year. Commencing on the Premises Reduction Date, the "Base Year" shall be 2022.

7. Payment of Common Area Expenses and Real Estate Taxes. Commencing on January 1, 2022 and continuing thereafter throughout the Term, Tenant shall pay Landlord, in addition to the Base Rent due for the Premises, (i) Tenant's Proportionate Share of Expense Increases in accordance with the provisions of Section 7.1 of the Original Lease, and (ii) Tenant's Proportionate Share of Real Estate Taxes in accordance with the provisions of Article 8 of the Original Lease.

8. Landlord's Payment Address. Landlord's address for payment shall be as follows:

Bank Name: Wells Fargo Bank, N.A.

Bank Address: San Francisco

ABA#: 121 000 248

Account No.: 4677401770

Account Name: EB Sterling, LLC\*

Reference: EB Rockville, LLC – Montgomery County

\*Note: Payments for EB Rockville, LLC are processed through the EB Sterling, LLC account.

By Standard Mail:

EB Rockville, LLC c/o EB Sterling, LLC

P.O. Box 76355

Baltimore, Maryland 21275-6355

Checks Payable to: EB Rockville, LLC

By Overnight Mail:

Wells Fargo Bank, N.A.

Attn: EB Rockville, LLC c/o EB Sterling, LLC, Lockbox 76355

7175 Columbia Gateway Drive

Columbia, Maryland 21046

9. Landlord's Work.

a. Upon execution of this Amendment, Landlord and Tenant have approved the preliminary drawings for the site plan, floor plan and the Building structure (the "Preliminary Drawings") attached hereto as Exhibit B, together with the scope of work attached hereto as Exhibit C (the "Scope of Work"). On or before the forty-fifth (45<sup>th</sup>) day following the Effective Date, Landlord shall prepare and submit to Tenant a set of construction drawings including a space plan (the "Construction Drawings") covering all

work to be performed by Landlord in constructing the interior and exterior improvements (the "Landlord's Work"), which shall be based on the Scope of Work and completed during the hours 4 pm to 8 am Monday through Friday and all day Saturdays and Sundays, unless otherwise agreed by Tenant in writing. Tenant shall have ten (10) business days after receipt of the Construction Drawings in which to review the Construction Drawings and to give to Landlord written notice of Tenant's approval of the Construction Drawings or its requested changes to the Construction Drawings. Tenant shall have the right to request changes to the Construction Drawings and Landlord shall implement such changes as the parties mutually agree upon. If Tenant fails to approve or request changes to the Construction Drawings within ten (10) business days after its receipt thereof, Tenant shall be deemed to have approved the Construction Drawings and the same shall thereupon be final. If Tenant requests any changes to the Construction Drawings, Landlord shall make those changes that are requested by Tenant and shall, within ten (10) business days of its receipt of such request, submit the revised portion of the Construction Drawings to Tenant. Tenant may not thereafter disapprove the revised portions of the Construction Drawings unless Landlord has failed to incorporate the comments of Tenant in a manner acceptable to Tenant and, subject to the foregoing, the Construction Drawings, as modified by said revisions, shall be deemed to be final upon the submission of said revisions to Tenant. Without limiting the foregoing, following the completion of the Construction Drawings in accordance with this Section 8(a), Tenant agrees to confirm Tenant's consent thereto in writing within ten (10) business days following Landlord's written request therefor.

b. Following Tenant's approval (or deemed approval) of the Construction Drawings, Landlord shall solicit competitive bids from at least three (3) contractors to be the general contractor for the Landlord's Work. Landlord and Tenant shall review the bids jointly and Landlord shall select the contractor mutually agreed upon by both parties, provided that Tenant will be reasonable in its agreement. Promptly following the selection of a contractor, Landlord shall deliver to Tenant a statement of the cost to construct and install all of the Landlord's Work (the "Cost Statement"). The Cost Statement shall include design fees, general conditions, construction management, contractor fees and a fee for Landlord's management of the construction and installation of Landlord's Work, not to exceed three percent (3%) of the Allowance (defined below). Tenant agrees to approve or reject the Cost Statement in writing within ten (10) business days following Landlord's written request therefor. If Tenant rejects the Cost Statement, Landlord and Tenant shall promptly meet to discuss changes to the Construction Drawings that shall be necessary to reduce the cost of the Landlord's Work to an amount approved by Tenant. Tenant shall be responsible for the cost to construct and install the Landlord's Work only to the extent that the Cost Statement, taking into account any increases or decreases to the Landlord's Work resulting from any Change Orders (as hereinafter defined), exceeds One Million Two Hundred Seven Thousand Nine Hundred Sixty-Five and No/100 (\$1,207,965.00) (the "Allowance"). If, following Tenant's approval (or deemed approval) of the Construction Drawings, the Cost Statement or a Change Order Memorandum of Agreement (as defined below) shows that the cost to construct and install the Landlord's Work will exceed the Allowance (such excess being herein referred to as the "Excess Landlord's Work Costs"), then Tenant shall pay the Excess Landlord's Work Costs to Landlord as set forth herein. At such time as Landlord's costs and expenses incurred in connection with the construction and installation of the Landlord's Work exceed the Allowance, Landlord will have the right

to invoice Tenant on a monthly basis for the portion of the Excess Landlord's Work Costs actually incurred by Landlord during the prior month plus a three percent (3%) construction management fee thereon, and Tenant shall pay to Landlord the amount set forth in such invoice within ten (10) days following receipt of such invoice. Tenant's failure to deliver the payments required in this paragraph shall entitle Landlord to stop the construction and installation of the Landlord's Work until such payment is received, and such delay shall constitute a Tenant Delay hereunder. In addition, all delinquent payments shall accrue interest at fifteen percent (15%) per annum.

c. Tenant shall have the right from time to time to request changes to the Construction Drawings by way of written change order (each, a "Change Order," and collectively, "Change Orders"). Landlord shall prepare and submit to Tenant within ten (10) days of receipt of such Change Order, a memorandum setting forth the impact on cost and schedule, if any, resulting from said Change Order (the "Change Order Memorandum of Agreement"), with such cost including any additional design fees and, if the applicable Change Order increases the cost to complete the Landlord's Work, plus the Landlord's Construction Management Fee of the additional cost to complete Landlord's Work. Tenant shall, within three (3) business days following Tenant's receipt of the Change Order Memorandum of Agreement, either (a) execute and return the Change Order Memorandum of Agreement to Landlord, or (b) retract its request for the Change Order. Landlord shall not be obligated to commence any work set forth in a Change Order until such time as Tenant has delivered to Landlord the Change Order Memorandum of Agreement executed by Tenant.

d. Landlord shall perform Landlord's Work in accordance with the Construction Drawings using Building standard materials and installations, in a good and workmanlike manner and in compliance with applicable laws, codes and regulations. Tenant agrees that Landlord may make any changes in Landlord's Work, the necessity or desirability of which becomes apparent following the Effective Date, upon prior written notice to Tenant for non-substantial changes and with the approval of Tenant (which approval shall not be unreasonably withheld or delayed) for substantial changes. Except as affected by Landlord's Work, Tenant continues to occupy the Premises in "as is" condition existing as of the date of this Amendment.

e. Landlord's Work shall be deemed to be substantially complete and the "Substantial Completion Date" shall occur on the day as of which Landlord reasonably determines that Landlord's Work has been completed except for items of work (and, if applicable, adjustment of equipment and fixtures) which can be completed after occupancy has been taken without causing undue interference with Tenant's use of the Premises (i.e. so-called "punch list" items).

f. Tenant shall be conclusively deemed to have accepted Landlord's Work unless, within sixty (60) days after the Substantial Completion Date, Tenant gives Landlord a notice setting forth in detail those portions of Landlord's Work Tenant does not accept.

g. Landlord agrees to perform Landlord's Work at its sole cost and expense and Tenant shall not be liable for any cost of Landlord's Work, except that Tenant shall pay to Landlord any increase in the cost of Landlord's Work that is attributable to (i) costs in

excess of the Allowance, (ii) any interference by Tenant or anyone acting under Tenant with the performance of Landlord's Work, or (iii) any other negligent or wrongful act or omission or breach of this Lease by Tenant, its employees, agents or contractors (the aggregate of all such increases being the "Excess Cost"). Tenant shall pay to Landlord (as Additional Rent) the full amount any Excess Cost within thirty (30) days after delivery to Tenant of a final accounting of the cost of Landlord's Work with reasonable supporting documentation establishing such Excess Cost. At such time as Landlord's costs and expenses incurred in connection with the construction and installation of the Landlord's Work exceed the Cost Statement, Landlord will have the right to invoice Tenant on a monthly basis for the portion of the Excess Costs actually incurred by Landlord during the prior month plus the Landlord's Construction Management Fee on the Excess Costs, and Tenant shall pay to Landlord the amount set forth in such invoice within ten (10) days following receipt of such invoice. Tenant's failure to deliver the payments required in this paragraph shall entitle Landlord to stop the construction and installation of the Landlord's Work until such payment is received, and such delay shall constitute a Tenant delay hereunder. In addition, all delinquent payments shall accrue interest at fifteen percent (15%) per annum.

h. In the event Tenant has costs associated with moving, telecommunications equipment, furniture, fixtures and equipment, including specialty trade fixtures to be used in the Premises (the "Premises Renewal Costs"), Tenant may submit itemized paid invoices for the Premises Renewal Costs to Landlord ("Tenant's Premises Renewal Costs Documentation"). After the occurrence of the Substantial Completion Date Tenant may submit its Premises Renewal Costs Documentation to Landlord. Within thirty (30) of the date Landlord receives Tenant's Premises Renewal Costs Documentation, Landlord shall credit Tenant's account for the portion of the Premises Renewal Costs equal to the lesser of (x) the Premises Renewal Costs, (y) thirty percent (30%) of the Allowance, or (z) the unused portion of the Allowance. Notwithstanding anything contained herein to the contrary, in the event Tenant fails to submit the Tenant's Premises Renewal Costs Documentation by the date that is one (1) year after the Substantial Completion Date, Tenant will be deemed to have waived all rights to reimbursement of any Premises Renewal Costs.

10. Right of Renewal. Tenant shall continue to have the Renewal Option set forth in Section 29.1 of the Original Lease.

11. Non-Appropriation. If the Lease is terminated for lack of appropriation pursuant to the terms of Section 4.2(D) of the Original Lease, Tenant shall pay a termination fee to Landlord, which termination fee shall be equal to the total of: (i) the unamortized portion of the brokerage fees paid to Jones Lang LaSalle and incurred by Landlord with respect to this Amendment, and (ii) the unamortized portion of the Allowance set forth in Section 8(b) of this Amendment. Notwithstanding the foregoing, no termination fee shall be payable if there is no appropriation available to pay such termination fee.

12. Landlord's Notice Address. Section 1.14 of the Lease is hereby amended to provide that Landlord's Address for Notice shall be as follows:

c/o Buchanan Partners LLC

9841 Washingtonian Boulevard, Suite 300  
Gaithersburg, Maryland 20878  
Attn: Theresa Scafate

13. Brokers. Tenant warrants and represents that it has dealt with no broker in connection with the consummation of this Amendment, other than Jones Lang LaSalle ("Broker"), and in the event of any brokerage claims or liens, other than by Broker, against Landlord or the Property predicated upon or arising out of prior dealings with Tenant, Tenant agrees to defend the same and indemnify and hold Landlord harmless against any such claim, and to discharge any such lien.

14. Representations and Warranties. Landlord and Tenant each represent and warrant to the other, with knowledge that the other is relying on this representation and warranty, that each individual executing this Amendment on behalf of such party is duly authorized to execute and deliver this Amendment, and that each party is a duly incorporated or organized entity under the laws of its state of incorporation or formation, is qualified to do business in the jurisdiction in which the Building is located, is in good standing under the laws of the state of its incorporation or formation and the laws of the jurisdiction in which the Building is located, and has the power and authority to enter into this Amendment, and that all corporate or partnership action requisite to authorize such party to enter into this Amendment has been duly taken.

15. Miscellaneous Terms. Landlord and Tenant hereby acknowledge that the Lease is in full force and effect and Tenant acknowledges that Landlord has met all of its obligations under the Lease and Landlord is not in default thereunder. Except with respect to the Landlord's Work, Tenant accepts the Premises in its "as is" condition. Except as expressly amended by this Amendment, all terms, conditions and provisions of the Lease as heretofore amended are hereby ratified and confirmed and shall continue in full force and effect in accordance with their terms. This Amendment contains and embodies the entire agreement of the parties hereto with respect to the subject matter hereof. In the event of any inconsistencies between the provisions of the Lease as heretofore amended and this Amendment, the provisions of this Amendment shall control. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. This Amendment may be executed by facsimile, electronic communication in portable document format (.pdf) or duplicate originals, and the parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one and the same instrument for effective execution.

*[Signatures on Following Page.]*

IN WITNESS WHEREOF, the parties hereunto have executed this Amendment as of the date first written above.

**LANDLORD:**

EB ROCKVILLE, LLC,  
a Delaware limited liability company

By: 

Name: Shilpa Knauder

Its: Authorized Signatory

**TENANT:**

MONTGOMERY COUNTY, MARYLAND

By: 

Name: Fariba Kassiri

Its: Authorized Signatory

APPROVED AS TO FORM & LEGALITY  
OFFICE OF THE COUNTY ATTORNEY:

RECOMMENDED:

Greg Ossont, Deputy Director, General Service

By: Neal Anker

Date: 9/27/2021

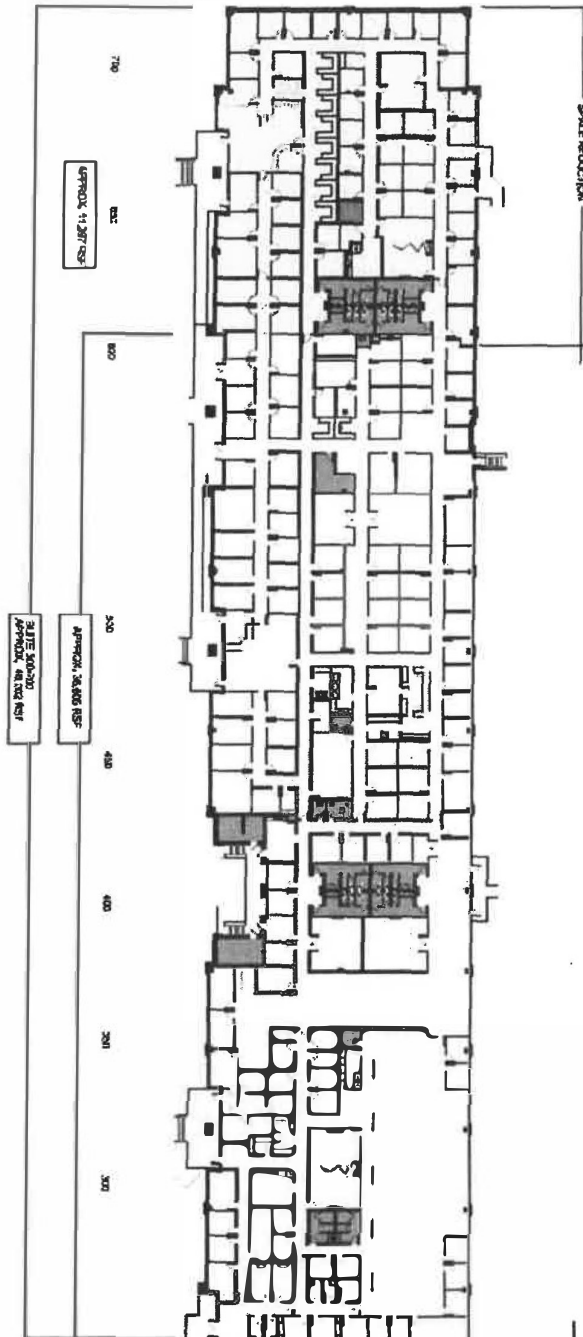
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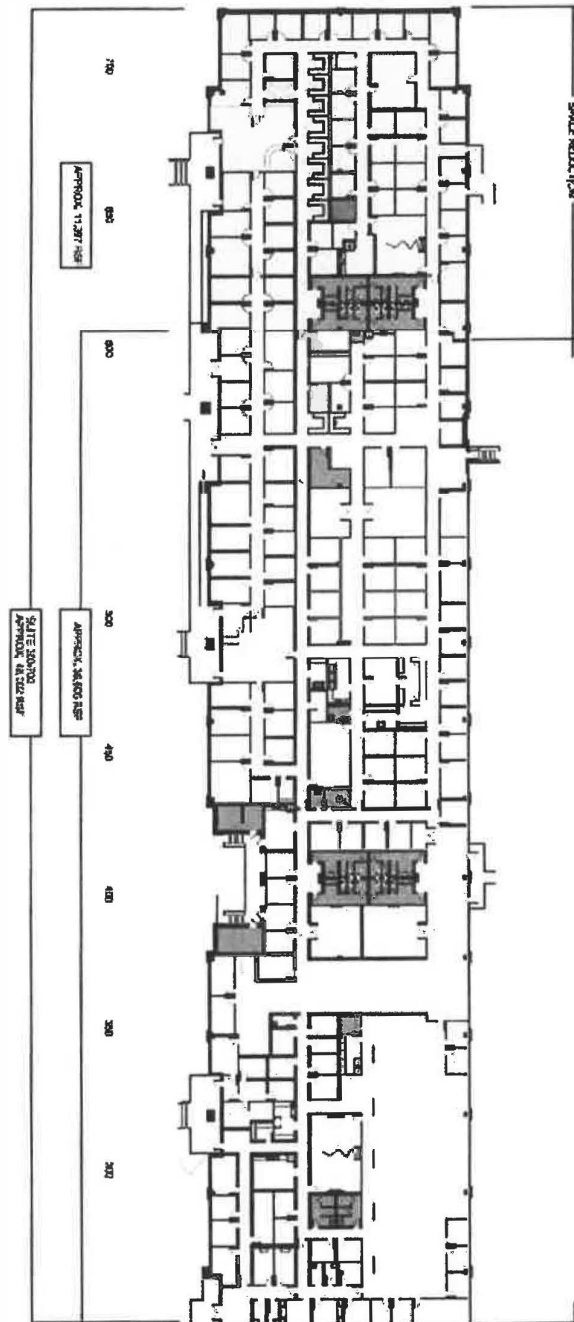
## EXHIBIT A

### Premises



## EXHIBIT B

### Preliminary Drawings



## **EXHIBIT C**

### **Scope of Work**

The Scope of Work shall consist of the following items:

1. Demising of the Premises.
2. Such other renovations as may be specified in accordance with this Amendment.